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Docket No. 04-689

IN THE

Supreme Court of the United States

John Carman,

Petitioner,

v.

Alicia Fuentes, Jeanne Daumien, Tom Ribsyk, Russell Hixon, Dave Wells, Rudy Camacho, David Bond, T. Burgess, B. Stoney, M. Chambers, Raymond W. Kelly, United States Treasury, Doe 1, an Unknown Police Officer of the La Mesa Police Department, and Does 2 through 50,

Respondents.

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF THE CASE

This case arises out of an investigatory stop by Sergeant Bryan Stoney and Officer Todd Burgess (hereinafter, "Respondents"), police officers for the City of La Mesa, of a vehicle driven by Petitioner. The stop was initiated after U.S. Customs Internal Affairs Investigator Alicia Fuentes requested assistance in her investigation of a former Customs employee, Petitioner John Carman. Petitioner's Appendix II, p. 2, lls. 2-4. Agent Fuentes informed Detective David Bonds of the La Mesa Police Department that Carman told a current U.S. Customs employee in November 1998 that he was in possession of fraudulent U.S. Customs credentials which he used to justify carrying a firearm. Petitioner's Appendix II, p. 2, lls. 4-7. Petitioner was stopped by Respondents on June 16, 1999 for making a left turn without signaling. Petitioner's Appendix II, p. 2, ln. 2. After Respondents confirmed that Petitioner was carrying a concealed weapon and that Petitioner was not entitled to carry a concealed firearm, Petitioner's firearm was seized. Petitioner's Appendix II, p. 3, lls. 4-21.

Petitioner eventually sued Respondents and the other individuals alleged to have been involved in the stop in the Federal Court for the Southern District of California for, among other things, money damages and injunctive relief for constitutional violations pursuant to 42 U.S.C. §§ 1983, 1985 and 2000(e), and the First, Fourth, Fifth and Fourteenth Amendments to the U.S. Constitution. Petitioner's Appendix II, p. 1, lls. 16-18. Respondents filed a Motion for Summary Judgment on the ground the officers were entitled to qualified immunity. Petitioner's Appendix II, p. 1, lls. 21-22. The District Court denied the Motion for Summary Judgment as

to Respondents on the §1983 claim but granted the motion as to all of the other claims against Respondents. Petitioner's Appendix II, p. 9, lls. 2-4.

Respondents appealed the District Court's denial of their Motion for Summary Judgment on the ground of qualified immunity. Petitioner's Appendix I, p. 2, lls. 1-3. The Ninth Circuit reversed. Petitioner's Appendix I, p. 3, ln. 19. Petitioner now seeks a writ of certiorari.

ARGUMENT

I

PETITIONER FAILS TO PRESENT ANY COMPELLING REASON TO GRANT HIS PETITION FOR WRIT OF CERTIORARI.

Rule 10 of the Supreme Court sets forth the considerations governing review on a writ of certiorari and states in pertinent part as follows:

> "Review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons. The following, although neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons the Court considers:
>
> ***
>
> (c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be,

> settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.
>
> A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law."

The crux of the petition here is that the Ninth Circuit, in reviewing the District Court's grant of Respondent's motion for summary judgment, failed to view the facts presented in a light most favorable to the party asserting injury. Petitioner contends that this alleged omission was contrary to the decision of this Court in Saucier v. Katz 533 U.S. 194 (2001) and thus warrants granting the petition under Rule 10(c) of the Supreme Court. Petitioner argues that his petition for writ of certiorari should be granted in that the Ninth Circuit "improperly analyzed" the facts. Petition for Writ of Certiorari, p. 10, lls. 8-9. However, as pointed out in Rule 10 of the Supreme Court, "[a] petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law." See also Ticor Title Ins. Co. v. Brown, 511 U.S. 117, 122 (1994) [achieving justice in a particular case "is ordinarily not sufficient reason" for granting certiorari]. In any event, a cursory review of the Ninth Circuit's memorandum opinion reveals that its decision does not conflict with Saucier v. Katz.

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II

VIEWING THE ALLEGED FACTS IN THE LIGHT MOST FAVORABLE TO PETITIONER, THE NINTH CIRCUIT CONCLUDED THAT NO CONSTITUTIONAL VIOLATION OCCURRED.

A. The Ninth Circuit did not "improperly analyze" the facts.

Petitioner argues that the Ninth Circuit "improperly analyzed" the facts in reversing the District Court's denial of Respondent's motion for summary judgment. Petition for Writ of Certiorari, p. 10, lls. 8-9. Specifically, Petitioner contends that "the Ninth Circuit erred because all disputed factual issues that it analyzed were viewed in a light most favorable to respondents, the non-injured party." Petition for Writ of Certiorari, p. 7, lls. 13-15. Petitioner further contends that "the Ninth Circuit ignored several important factual issues in their decision when they should have examined these facts in a light favorable to petitioner; therefore, they incorrectly reversed the District Court's decision." Petition for Writ of Certiorari, p. 10, lls. 2-6. Petitioner therefore argues that the Ninth Circuit's decision completely disregarded this Court's decision in Saucier v. Katz, supra, 533 U.S. 194 which states:

> "A court required to rule upon the qualified immunity issue must consider, then, this threshold question: Taken in the light most favorable to the party asserting the injury, do the facts alleged show the officer's conduct

violated a constitutional right?" Id. at p. 201.

As this Court stated in Saucier, this is the initial inquiry into qualified immunity. Id.

The Ninth Circuit noted, "[a]s concluded by the district court, material questions of fact exist as to whether Carman committed a traffic violation since he claims to have engaged his left turn signal." Petitioner's Appendix I, p. 2, lls. 12-14. However, the court found that reasonable suspicion warranting a stop of Petitioner's vehicle existed "independent of any perceived traffic violations." Petitioner's Appendix I, p. 3, lls. 10-12. The Ninth Circuit based its decision on the following:

> "At the time of the stop, the Officers had received information from a law enforcement agency that it believed Carman was carrying false credentials and a concealed weapon in violation of law. That information was based, not on an anonymous informant, but from a Customs officer who had received the information directly from Carman. Before stopping Carman, the Officers requested information about his license plate indicating that it was a 'confidential cover.' Officer Burgess knew from his experience that 'confidential cover' was used by current law enforcement officers to protect their personal information. This indicated to the Officers that Carman was continuing to represent himself as a law enforcement officer." Petitioner's Appendix I, p. 3, lls. 1-10.

Petitioner would have the Court believe the fact that the Ninth Circuit did not enunciate in its opinion certain contentions made by Petitioner indicates the court failed to view the facts in a light most favorable to Petitioner. However, that the court must view the factual allegations in the light most favorable to the non-moving party does not mean that the court is required to deny summary judgment. Petitioner ignores the reality that the Ninth Circuit simply viewed Petitioner's contentions, rightfully, as immaterial to the issue of reasonable suspicion.

Petitioner contends that the court ignored its contention that the information regarding a concealed weapon and false credentials was untrue and obtained by Customs from sources other than himself. Petition for Writ of Certiorari, p. 8, lls. 4-6. However, Petitioner is placing an improper emphasis on only one sentence of the Ninth Circuit's opinion. The Ninth Circuit acknowledges that Respondents received information from U.S. Customs that it believed Carman was carrying false credentials and a concealed weapon. Petitioner apparently contends that his allegation that the information was false and did not originate from him contradicts the Ninth Circuit's finding. This is not so.

"Reasonable suspicion, like probable cause, is dependent upon both the content of information possessed by police and its degree of reliability." Alabama v. White, 496 U.S. 325, 330 (1990). Nothing in Petitioner's allegation suggests that Respondents, police officers with the City of La Mesa, had any reason to know that the information provided to them by U.S. Customs was false or that they had any reason to doubt its veracity. The information possessed by

respondents was that a U.S. Customs officer had received the information from Petitioner, himself. Petitioner's Appendix II, p. 3, lls. 3-5. The information therefore had a high degree of reliability. That Petitioner claims he was not the source of the information is irrelevant since, as stated in White, supra, the relevant inquiry is into what information Respondents ***actually had***. White, supra at p. 330. Thus, the court, even accepting Petitioner's denial of the truth of the information made available to Respondents, could still conclude that the Respondents had reasonable suspicion to make an investigatory stop based on the information Respondents' had at the time of the stop.

Petitioner further argues that the Ninth Circuit ignored his argument that "[w]hen a license plate is run through the computers and 'confidential cover' appears it could mean that the individual is a private investigator, previous victim of a crime or is a current law enforcement officer." Petition for Writ of Certiorari, p. 8, lls. 15-17. Petitioner's argument lacks authority for what constitutes "confidential cover." Nevertheless, assuming arguendo that such a fact alone may not constitute grounds for an investigatory stop, when coupled with the information received by Respondents from U.S. Customs, reasonable suspicion was present according to the Ninth Circuit. See Petitioner's Appendix I, p. 3, lls. 1-10. Thus, the Ninth Circuit did not "disregard" Petitioner's version of events, but determined that the fact that "confidential cover" is often used by law enforcement officers in conjunction with the information Respondents received regarding Petitioner's masquerading as a law enforcement officer created reasonable suspicion to perform an investigatory stop.

A reasonable reading of the Ninth Circuit's opinion reveals that the court did not view the factual issues in a light more favorable to Respondents. Instead the Ninth Circuit determined that, even accepting Petitioner's version of events as true, Respondents still had reasonable suspicion to make an investigatory stop of Petitioner.

B. The Ninth Circuit did not "ignore" any facts alleged by Petitioner.

Petitioner argues that the Ninth Circuit "ignored" important factual issues and therefore did not "take 'all facts and inferences in favor of the plaintiff.'" Petition for Writ of Certiorari, p. 10, lls. 1-8. Specifically, Petitioner argues that the Ninth Circuit did not "analyze" the issue of Petitioner's contention that he engaged his left turn signal which Petitioner argues precluded a finding of reasonable suspicion. Petition for Writ of Certiorari, p. 10, lls. 19-22.

Petitioner's argument is without merit. The Ninth Circuit clearly resolved the issue of the turn signal in Petitioner's favor. Petitioner's Appendix I, p. 2, lls. 10-12. However, the Ninth Circuit found that the information Respondents received from Agent Fuentes in conjunction with Respondents' discovery that Petitioner was using "confidential cover" on his license, a device which Respondents knew to be used by current law enforcement officers to protect their personal information, created a reasonable suspicion warranting a stop of Petitioner's vehicle "***independent of any perceived traffic violations***." [Emphasis added.] Petitioner's Appendix I, p. 3, lls. 1-12. Thus, resolving the traffic violation issue in Petitioner's favor did not require the court to withhold application of qualified

immunity.

Petitioner further argues that the Ninth Circuit disregarded the fact that "the tip that Respondents acted on was seven months old." Petition for Writ of Certiorari, p. 11, lls. 6-7. Petitioner is apparently implying that the length of time since the information warranting the stop was acquired reduced any "indicia of reliability" the tip may have had. However, the question is not "how old is the tip," but "how reliable is the tip?" See White, supra, 496 U.S. 325. As noted above, White requires the court to inquire into the information the officer actually had. Id. at p. 330. Because, the information possessed by respondents was that Petitioner, himself, was the source of the information (Petitioner's Appendix II, p. 3, lls. 3-5) said information had a high degree of reliability.

Even if some doubt exists as to the reliability of the information available to Respondents, reasonable suspicion may be found based on the officer's having corroborated some aspects of a detailed tip. See White, supra, 496 U.S. 325 [anonymous telephone tip that defendant would be leaving a particular apartment at a particular time in a particular vehicle, that she would be going to a particular motel, and that she would be in possession of cocaine, as corroborated by independent police work, exhibited sufficient indicia of reliability to provide reasonable suspicion to make investigatory stop]. In the case at bar, the Ninth Circuit determined that the information provided by Agent Fuentes, corroborated by Petitioner's use of confidential cover on his license, warranted a reasonable suspicion that Petitioner was in possession of fraudulent U.S. Customs credentials. Petitioner's Appendix I, p. 3, lls. 1-12. That the information

provided to U.S. Customs may have been "stale" as Petitioner argues, is overshadowed by the fact that the information was corroborated by the "confidential cover" on Petitioner's license. While the corroborating information did not confirm that Petitioner was carrying a concealed firearm, not every detail of the information must be verified. White, supra at p. 331.

CONCLUSION

For the reasons set forth above, Defendants/Respondents Bryan Stoney and Todd Burgess, respectfully request that the Petition for Writ of Certiorari filed by Plaintiff/Petitioner be denied.

Respectfully submitted,

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